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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16.10.2023

+ **MAC.APP. 479/2023**

CHOLAMANDALAM MS GENERAL INSURANCE CO. LTD

..... Appellant

Through: Mr.Pankaj Gupta, Adv. (through VC)

versus

SMT. SUNITA DEVI AND OTHERS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 53788/2023

1. For the reasons stated in the application, the delay of 36 days in filing of the appeal stands condoned.

2. The application stands disposed of.

CM APPL. 53787/2023(Exemption)

3. Allowed, subject to all just exceptions.

MAC.APP. 479/2023 & CM APPL. 53786/2023

4. This appeal has been filed challenging the Award dated 06.06.2023 (hereinafter referred to as 'Impugned Award') passed by the learned District Judge (Commercial Court)-02, North-West, Rohini Courts, Delhi in MAC





Petition No.68/2021 titled as *Smt.Sunita Devi & Ors. v. Sh.Sahun & Ors.*

5. It was the case of the respondent nos. 1 to 4/claimants before the learned Tribunal that on 23.01.2021 at about 8:30 pm, Sh. Bhanu Pratap alias Bhanu (hereinafter referred to as 'deceased') was loading apple boxes in a Canter bearing no. RJ14-GH-4845, when a Truck bearing no. HR55-AH-5342 (hereinafter referred to as 'Offending Vehicle') being driven in a rash and negligent manner by the driver that is the respondent no. 5 herein, reversed without taking necessary precautions, as a result of which the deceased was sandwiched between the two trucks and suffered grievous injuries. Thereafter, he was taken to Aruna Asaf Ali Hospital, where he was declared as brought dead. Following his death, the claimants filed the Claim Petition claiming compensation. The same has been allowed by the impugned Award.

6. The limited challenge of the appellant to the Impugned Award is on the determination of the income of the deceased.

7. The learned counsel for the appellant submits that the claimants, that are the respondent nos.1 to 4 herein, in order to prove the income of the deceased, had produced Mr.Harbansh Singh Pathania, Manager of M/s Bhagwati Goods Carrier (PW-3). In his evidence by way of affidavit, he vaguely stated that the deceased was earning Rs.700/- to Rs.800/- per day while working as a *Palledari* with M/s Bhagwati Goods Carrier. He also produced the purported certificate dated 20.02.2021 (Ex.PW-3/2) issued by M/s Bhagwati Goods Carrier regarding the income of the deceased. In his cross-examination, however, he admitted that he had not prepared the said document nor was he aware about the handwriting on the said document. The learned counsel for the appellant submits that, therefore, the said





document was not proved by the said witness.

8. He submits that the respondent nos.1 to 4 also produced Mr.Puran Chand, proprietor of M/s Bhagwati Goods Carrier (PW-4) to prove the income of the deceased. The said witness reiterated that the said firm used to pay about Rs.800/- to Rs.900/- per day to the deceased. He submits that, however, in his cross-examination, the said witness admitted that he knows only to append his signatures and can read only a bit of the Hindi language. The learned counsel for the appellant submits that the testimony of PW-4 also cannot be relied upon for determining the income of the deceased, as he could not produce any other evidence in support of his assertion of making payment of Rs.800/- to Rs.900/- per day to the deceased.

9. The learned counsel for the appellant further submits that the document (Ex.PW-3/2) itself claims that the appellant was earning Rs.800/- to Rs.900/- per day working as a *Palledari*. He submits that if the deceased was an employee of M/s Bhagwati Goods Carrier, as claimed, there would have been monthly salary payable to him rather than wages being paid on a daily basis. He submits that this itself casts a doubt on the claim of the income raised by the respondent nos.1 to 4.

10. I have considered the submissions made by the learned counsels for the appellant.

11. From the nature of the accident itself, it was proved that the deceased was working as a *Palledari*, undertaking the task of loading and unloading goods. The respondent nos.1 to 4 had produced two witnesses from the employer of the deceased, M/s Bhagwati Goods Carrier, to prove the income of the deceased as Rs.800/- to Rs.900/- per day. There is no reason to disbelieve their testimony.





12. Even otherwise, I find that the income of the deceased as claimed by the respondent nos.1 to 4 is near to the prevailing rates of salary. To a pointed query to the learned counsel for the appellant, he admits that around the period of the accident, the minimum wages notified by the Govt. of NCT of Delhi for an unskilled labour was around Rs.15,492/- per month. The learned Tribunal, rightly relying upon the judgment of the Supreme Court in *Mohammed Siddique & Anr. v. National Insurance Co. Ltd. & Ors.* (2020) 3 SCC 57 has held the income of the deceased to be Rs.21,000/- per month herein. The same cannot, therefore, be stated to be exorbitant or unconnected with reality. It is to be noticed that the claimants are not to prove the income of the deceased beyond reasonable doubt or on a touchstone of burden of proof that is applicable in the criminal trial.

13. I, therefore, find no merit in the present appeal. The same stands dismissed. The application also stands disposed of.

14. As the appeal has been dismissed at the preliminary stage, the appellant is exempted from depositing the statutory amount.

NAVIN CHAWLA, J

OCTOBER 16, 2023/ns/rp

